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UNITED STATES COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO HOMELESS UNION, a
local of the CALIFORNIA HOMELESS
UNION/STATEWIDE ORGANIZING
COUNCIL, on behalf of itself and those it
represents; BETTY RIOS; DONTA
WILLIAMS; FALISHA SCOTT and all those
similarly situated,

Plaintiffs

vs.

COUNTY OF SACRAMENTO, a political
subdivision of the State of California; CITY
OF SACRAMENTO, a municipal corporation;
and DOES 1 – 100,

Defendants.

Case No.: 2:22-cv-01095-TLN-KJN

**PLAINTIFFS' MOTION FOR ORDER TO
SHOW CAUSE WHY DEFENDANT CITY
OF SACRAMENTO SHOULD NOT BE
HELD IN CONTEMPT FOR VIOLATING
TEMPORARY RESTRAINING ORDER;
DECLARATION OF ANTHONY D.
PRINCE.**

**PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY CITY OF
SACRAMENTO SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING
TEMPORARY RESTRAINING ORDER and DECLARATION OF ANTHONY D.
PRINCE**

A civil contempt order is proper where the alleged contemnor (1) violated [a] court order,
(2) beyond substantial compliance, (3) not based on a good faith and reasonable interpretation of the
order, (4) by clear and convincing evidence. *Labor/Cnty. Strategy Ctr. v. Los Angeles Cty. Metro
Transp. Auth.* 564 F.3d 1115, 1123 (9th Cir. 2009) (citing *In re Dual-Deck Video Cassette
REcorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).

1 The moving party has the burden of showing by clear and convincing evidence that te
2 contemnors violated a specific and definite order of the court. The contempt 'need not be willful,'
3 and there is no good faith exception to the requirement of obedience to a court order." *Dual-Deck*,
4 10 F.3d at 695. A district court has wide latitude in determining whether there has been a
5 contemptuous defiance of its order." *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984.)

6 On August 3, 2023, this Court issued a Temporary Restraining Order instructing the City of
7 Sacramento "and all of its officers, agents, servants, employees, attorneys, and all other persons
8 under their direction and control, from clearing encampments belonging to the unhoused." Doc.39.
9 Although the City sought exceptions from the TRO under various anti-camping ordinances
10 including for "critical infrastructure" –which City Hall has been designated, the Order does not
11 provide them.
12

13 The scope of the TRO extends to the Sacramento City Hall Plaza where, pursuant to a "Sit-
14 Lie" Ordinance, unhoused persons have been prohibited during the day, although permitted to camp
15 and sleep overnight. Routinely, for almost three years, Sacramento Police officers and private
16 security employed by the City of Sacramento have appeared at sunrise to disperse the campers
17 which, up until now, have numbered between 20 and 40 persons depending on weather and other
18 conditions.
19

20 On August 4, 2023, the day after the TRO went into effect, Plaintiff Sacramento Homeless
21 Union received a report that the City Hall campers had been cleared from the Plaza. Attorney
22 Anthony Prince received this information while driving to Sacramento for a scheduled noon
23 press conference at City Hall. When he and others arrived, they immediately contacted the
24 complete absence of campers and promptly notified the City Attorney by phone and email.
25

26 Almost four hours later, the City Attorney having failed to respond, Attorney Prince again
27 contacted the City Attorney by email: "You have not responded to my message of several hours ago
28 regarding a violation of the TRO at City Hall. We have confirmed that contractors employed as

1 Security Guards for City Hall removed the homeless this morning. The injunction expressly applies
2 to the Security Guards and does not provide any exceptions, such as the "critical infrastructure" or
3 government buildings. It is the City's obligation to communicate the Court's order to all employees,
4 agents, contractors, etc.

5 Finally, at 3:50 pm, City Attorney Andrea Velasquez emailed Attorney Prince: "Thank you
6 for letting us know. We have addressed the issue with SPD and it should not occur again while
7 the TRO is in place."

8
9 At 4:50 pm Plaintiffs' counsel emailed the City Attorney writing: Thank you for responding.
10 Unfortunately, not only were campers removed, but in talking to some of those who went to
11 Cesar Chavez Park, where they have routinely gone after the daily sweeps, there is now
12 confusion and concern about their right to be at City Hall during the day and even at night. I
13 strongly suggest that you post a notice that campers are entitled to remain at the location 24 hours
14 a day until the current TRO expires or longer should the Court extend its Order.

15
16 On Monday morning, August 7, 2023, Plaintiff Homeless Union learned that, once again,
17 police and security guards had dispersed the City Hall campers. Before Union officers could
18 arrive at City Hall, City Attorney Grace Pak sent a message to Attorney Prince admitting the
19 City's actions, but, again providing an excuse.

20 Shortly thereafter Mr. Prince contacted the City Attorney insisting that the City
21 immediately go to the areas to which the campers had been dispersed and advise them of their
22 right to be at the Courthouse during the day.

23
24 On Tuesday, August 8, 2023, Monica Coleman, at approximately 5:00 am, local
25 television news reporter called Mr. Prince and told him that she and her crew were at City Hall
26 and had watched while a person believed to be a City contractor began power washing the area
27 where approximately 15 campers had been sleeping. According to Ms. Coleman—who later
28 filed a report on the evening news—the power washer operator provided no warning or

1 opportunity to the campers to move before he began spraying the high-pressure water. Instead,
2 Ms. Coleman observed the campers grabbing what they could and fleeing. As of the time the
3 news crew left, there were no campers at City Hall.

4 There is no direct evidence that the City acted deliberately in violating the Order. But
5 under the law, the contempt need not be willful and there is no good faith exception to the
6 requirement of obedience to a court order." *Dual-Deck*, 10 F.3d at 695. However, there is a thin
7 line between acting deliberately and acting in disregard of clear orders, failing to promptly and
8 effectively communicating to and overseeing obedience to the Order on the part of the Police
9 Department, private security and all other agents, etc. The Union specifically advised the City
10 and following the first violation on Monday, Aug. 7, the City represented that they had taken
11 steps to insure compliance by their agents. Yet, the same excuse "an oversight"
12 "misunderstanding" etc. was used not once, but twice and continues to be used in public
13 statements to the media which has widely reported the story.

14
15 As a result of the City's misconduct, the number of campers at City Hall has
16 dramatically shrunk and the Union, in its efforts to inform the displaced campers of their
17 rights under the Order, has learned that many are now scared to return. Instead of being the
18 substantial protection of the shade provided at City Hall Plaza, they are in the hot sun, at the
19 increased risk of harm that the Injunction was intended to prevent.

20
21 If the City will not or cannot insure compliance at the building that houses its entire
22 administration --City Hall -- how can the Court and the Plaintiffs be assured that it is insuring
23 obedience anywhere else in Sacramento?

24
25 Last year, Plaintiffs informed the Court that the City had violated its injunction with
26 regard to two homeless persons who police had told to leave the shaded safety of an overpass.
27 Although the Court declined to impose sanctions, noting that Plaintiffs had no requested any
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1 specific sanctions, it nonetheless included in its Order of September 2, 2022 “If the Court learns
2 the City has violated this Order, the Court will not hesitate to issue sanctions in the future.”

3 One year later, with a virtually identical Order in place and triple digits returning to
4 Sacramento in a matter of days, Plaintiffs believe that the City must be deterred from all but the
5 most rigid, thorough compliance on the its own part and that of those under its control. In order
6 to address this situation as it unfolded in the midst of preparing Plaintiffs’ Reply Brief as well as
7 the Joint Statement ordered by the Court, counsel had to divert time and attention from other
8 vital matters and expend approximately 7 hours acquiring the evidence necessary for
9 presentation of this this Motion for OSC. This attorney has never charged the Sacramento
10 Homeless Union for its representational and legal work and neither the Union nor this Law
11 Office receives any funding from any source. With 24 years’ experience in civil rights,
12 disability, labor and employment law, my normal rate for clients other than the unhoused and
13 the Homeless Union is in the range of \$350 - \$450 per hour. Accordingly, Plaintiffs request
14 monetary sanctions in the amount of \$2,500 as well as further Orders from the Court to insure
15 compliance and consequences for any further violations should, as Plaintiffs’ pray, the Order is
16 extended or a Preliminary Injunction is issued.
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18

19 Under penalty of perjury under the laws of the United States and the State of California,
20 I hereby swear and affirm that the emails attached hereto as Exhibit A are true and correct
21 copies of communications between the City Attorney and myself. I also swear and affirm that
22 the facts presented in this motion are based on personal knowledge and otherwise on
23 information and belief.
24

25 Dated: August 9, 2023

26 Executed at Fresno, CA

Respectfully Submitted,

/s/ Anthony D. Prince

Law Offices of Anthony D. Prince
Attorney for Plaintiffs